IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Income Tax Appeal No. 18 of 2004

M/s B. J. Services Co. Middle East,
as Agent of Mr. Peter Grubic
Vikas Centre, 2nd Floor, S.V. Road,
Santacruz (W), Mumbai.

....Appellant

Versus

1. Income Tax Appellate Tribunal, Delhi Bench 'D' New Delhi
2. Commissioner of Income Tax (Appeals), Dehradun
3. Assistant Commissioner of Income Tax, Special Circle, Dehradun

..... Respondents

Mr. V.K. Bist, Senior Advocate for the appellant.
Mr. S.K.Posti, Advocate for the respondents.

Dated: December 14, 2005

Coram: Hon. P.C. Verma, J.
Hon. J.C.S. Rawat, J.

Both the parties are ready to argue the matter today.

2. This appeal has been preferred against the consolidated order dated 03.02.2004 for the assessment year 1997-98, passed by the Income Tax Appellate Tribunal, (Bench 'D' New Delhi).

3. The appellant had entered into a contract with ONGC for cementing services which is an essential part of drilling process on rig. For the execution of the contract, the appellant was employed and put to services. As per terms of the services, 28 days was working days and 28 days was off days. After working for 28 days on the Board, the appellant had gone

outside India and could not stay in India for 28 days. The Assessing Officer taxed the off-period salary. In the first appeal, the Commissioner of Income Tax (Appeals), Dehradun after relying on its earlier order dismissed the appeal. In the second appeal preferred by the assessee, the Income Tax Appellate Tribunal, Delhi partly allowed the appeal.

4. The question of law framed in the memo of appeal for our determination is as follows:-

> ***"Whether on the facts and in the circumstances of the case, Tribunal is legally justified in treating the amount paid for the off period as the income earned in India in view of the explanation to Section 9(1)(ii) while admittedly no service has been rendered during off period in India and inasmuch as, the subsequent amendment made in the explanation w.e.f. 01.04.2000 shows that the amount paid for off period or leave period is regarded as the income accrued in India only w.e.f. 01.04.2000"?***

5. An identical question was answered by the Division Bench of this Court in the favour of the Revenue in the case of Commissioner of Income Tax and another Vs. *Sedco Forex International Drilling Co. Ltd. Reported in (2003) 264 ITR 320.* The Special Leave Petition was file against the Judgment by the Sedco Forest International Drilling Co. Ltd., which was converted into Civil Appeal Nos.351-355 of 2005. The Hon'ble Apex Court in **"Sedco Forex International Drill Inc. and Others Vs. Commissioner of Income Tax, Dehradun and Another, JT 2005(9) SC 639"** has held that since the Explanation to section 9(1)(ii) of the income Tax Act, 1961 was amended by the Finance Act 1999 and was prospective, therefore, it could not be made applicable in the previous years i.e. to say that no retrospective effect can be given to the Explanation, if the assessment proceedings are pending after the said amendment and accordingly the judgment of Division

Bench of this Court was set aside as the assessment year in dispute was prior to 1999.

6. In the present case also, the assessment year is prior to 1999, thus the assessee cannot be taxed in view of the law laid down by the Hon'ble Apex Court **"Sedco Forex international Drill Inc. and Others Vs. Commissioner of Income Tax, Dehradun and Another (Supra).**

7. Accordingly, the appeal is allowed. The question is answered accordingly. No order as to costs.

(J.C.S. Rawat, J.) **(P.C. Verma, J.)**

Rajeev Dang